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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) No. CR-07-00776 CW
14 Plaintiff,) GOVERNMENT'S SENTENCING
15 v.) MEMORANDUM
16 RUDY VARVEL,) Sentencing Date: July 29, 2008, 2:00 p.m.,
17 Defendant.) The Honorable Claudia Wilken

18
19 The United States of America requests that Defendant Rudy Varvel be sentenced to 78
20 months imprisonment, the low end of the United States Sentencing Guidelines ("Guidelines")
21 range, and three years of supervised release, consistent with the Plea Agreement and the
22 recommendation of the United States Probation Office ("USPO"). Additionally, the United
23 States requests that defendant be ordered to pay restitution in the amount of \$20,951.00 and a
24 \$700 special assessment.

25 INTRODUCTION

26 Defendant pleaded guilty to five counts of bank robbery and two counts of attempted
27 bank robbery following a series of bank robberies committed by defendant in 2006 throughout
28 Alameda and Contra Costa counties and elsewhere. Defendant was apprehended in July 2007

1 when he attempted to commit two similar bank robberies of a bank he had successfully robbed in
 2 December 2006. The parties and the USPO agree that the appropriate sentence in this matter is
 3 78 months imprisonment.

4 **FACTUAL BACKGROUND**

5 The Presentence Investigation Report (“PSR”) adequately sets forth the criminal activity.
 6 Consequently, the United States will not repeat the information in this section.

7 **ARGUMENT**

8 **I. PURSUANT TO THE SENTENCING GUIDELINES, DEFENDANT SHOULD BE
 9 SENTENCED TO 78 MONTHS IMPRISONMENT AND THREE YEARS OF
 SUPERVISED RELEASE.**

10 The parties agree with the Guidelines calculations set forth in the PSR resulting in a total
 11 offense level of 26 and a criminal history category of III. PSR ¶¶ 87, 96-98. Pursuant to the Plea
 12 Agreement in this matter, the United States recommends a sentence of 78 months imprisonment.

13 **II. APPLICATION OF THE FACTORS IN 18 U.S.C. § 3553(a) DEMONSTRATES
 14 THAT A SENTENCE OF 78 MONTHS IMPRISONMENT AND THREE YEARS
 OF SUPERVISED RELEASE IS REASONABLE.**

15 The Supreme Court recently noted that the “Guidelines . . . seek to embody the § 3553(a)
 16 considerations, both in principle and in practice.” Rita v. United States, 127 S. Ct. 2456, 2464
 17 (2007). These factors or considerations include the need for the sentence to promote respect for
 18 the law, afford adequate deterrence, protect the public from further criminal conduct by the
 19 defendant, and provide the defendant with needed training and medical care. 18 U.S.C. §
 20 3553(a). The sentence recommended by the parties achieves all of these sentencing goals. In
 21 addition to the bank robberies committed by defendant in the instant case, defendant was
 22 convicted of a misdemeanor burglary in 1988 and a felony attempted robbery involving the use
 23 of a pellet gun in 1991. PSR ¶¶ 92-93. A sentence of 78 months imprisonment will promote
 24 respect for the law, afford adequate deterrence, and protect the public from further criminal
 25 conduct by the defendant. Additionally, the PSR details defendant’s struggles with substance
 26 abuse and mental health issues. Defendant could therefore benefit from treatment for these
 27 issues in custody.

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In light of the above, the sentence recommended by the parties and the USPO achieves the sentencing goals set forth in 18 U.S.C. § 3553(a).

III. DEFENDANT SHOULD BE ORDERED TO PAY RESTITUTION IN THE AMOUNT OF \$20,951.00.

Consistent with the Plea Agreement and the PSR, the United States requests that defendant be ordered to pay restitution in the amount of \$20,951.00. The PSR accurately sets forth the restitution owed to the various bank victims. PSR ¶ 20.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court determine that defendant's Guidelines offense level is 26 and his criminal history category is III. The United States further respectfully requests that, taking into consideration the sentencing factors set forth in section 3553(a), the Court sentence defendant to the low-end of the applicable Guidelines range, namely, 78 months imprisonment, impose a three-year term of supervised release (under the terms and conditions recommended by the USPO), and order defendant to pay restitution in the amount of \$20,951.00 and a \$700 special assessment.

DATED: July 29, 2008

Respectfully submitted,

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United States Attorney

/s/
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